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**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**BENJAMIN DAVID HAMILTON
911 Edgewood Drive
Southaven, MS 38672**

Registered Nurse License No. 765187

RESPONDENT

Case No. 2013-270

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 11, 2012, Complainant Louise R. Bailey, M.Ed.,RN, in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, filed Accusation No. 2013-270 against Benjamin David Hamilton (Respondent) before the Board of Registered Nursing. (Accusation attached as Exhibit A.)

2. On or about January 11, 2010, the Board of Registered Nursing (Board) issued Registered Nurse License No. 765187 to Respondent. The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and expired on January 31, 2012 and has not been renewed.

3. On or about October 11, 2012, Respondent was served by Certified and First Class Mail copies of the Accusation No. 2013-270, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record which, pursuant to Business and Professions Code section 136 and Title 16, California Code of Regulation, section 1409.1, is required to be reported and maintained with the Board, which was and is:

911 Edgewood Drive
Southaven, MS 38672.

1 4. Service of the Accusation was effective as a matter of law under the provisions of
2 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
3 124.

4 5. On or about November 7, 2012 the Certified Mail documents were returned and
5 marked by the U.S. Postal Service, "Unclaimed." The address on the documents was the same as
6 the address on file with the Board. Respondent failed to maintain an updated address with the
7 Board and the Board has made attempts to serve the Respondent at the address on file.
8 Respondent has not made himself available for service and therefore, has not availed himself of
9 his right to file a notice of defense and appear at hearing.

10 6. Business and Professions Code section 2764 states:

11 The lapsing or suspension of a license by operation of law or by order or decision of
12 the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive
13 the board of jurisdiction to proceed with an investigation of or action or disciplinary proceeding
14 against such license, or to render a decision suspending or revoking such license.

15 7. Government Code section 11506 states, in pertinent part:

16 (c) The respondent shall be entitled to a hearing on the merits if the respondent files a
17 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
18 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's
19 right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

20 8. Respondent failed to file a Notice of Defense within 15 days after service of
21 the Accusation upon him, and therefore waived his right to a hearing on the merits of Accusation
22 No. 2013-270.

23 9. California Government Code section 11520 states, in pertinent part:

24 (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
25 agency may take action based upon the respondent's express admissions or upon other evidence
26 and affidavits may be used as evidence without any notice to respondent.

27 10. Pursuant to its authority under Government Code section 11520, the Board after
28 having reviewed the proof of service dated October 11, 2012, signed by Kami Pratab, and the

1 returned envelope finds Respondent is in default. The Board will take action without further
2 hearing and, based on Accusation No. 2013-270 and the documents contained in Default Decision
3 Investigatory Evidence Packet in this matter which includes:

4 Exhibit 1: Pleadings offered for jurisdictional purposes; Accusation No. 2013-270,
5 Statement to Respondent, Notice of Defense (two blank copies), Request
6 for Discovery and Discovery Statutes (Government Code sections
7 11507.5, 11507.6 and 11507.7), proof of service; and if applicable, mail
8 receipt or copy of returned mail envelopes;

9 Exhibit 2: License History Certification for Benjamin David Hamilton, Registered
10 Nurse License No. 765187;

11 Exhibit 3: Affidavit of Kami Pratab;

12 Exhibit 4: Out of State Discipline (Mississippi Board of Nursing);

13 Exhibit 5: Declaration of costs by Office of the Attorney General for prosecution of
14 Case No. 2013-270.

15 The Board finds that the charges and allegations in Accusation No. 2013-270 are separately and
16 severally true and correct by clear and convincing evidence.

17 11. Taking official notice of Certification of Board Costs and the Declaration of Costs by
18 the Office of the Attorney General contained in the Default Decision Investigatory Evidence
19 Packet, pursuant to the Business and Professions Code section 125.3, it is hereby determined that
20 the reasonable costs for Investigation and Enforcement in connection with the Accusation are
21 \$410.00 as of December 26, 2012.

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1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Benjamin David Hamilton has
3 subjected his following license(s) to discipline:

4 a. Registered Nurse License No. 765187

5 2. The agency has jurisdiction to adjudicate this case by default.

6 3. The Board of Registered Nursing is authorized to revoke Respondent's license(s)
7 based upon the following violations alleged in the Accusation, which are supported by the
8 evidence contained in the Default Decision Investigatory Evidence Packet in this case.

9 a. Violation of Business and Professions Code section 2761(a)(4) - Disciplinary
10 action by another State Board of Nursing.

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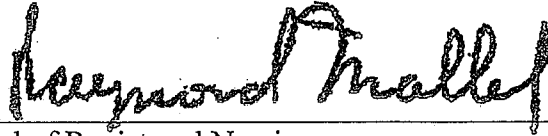
ORDER

IT IS SO ORDERED that Registered Nurse License No. 765187, heretofore issued to Respondent Benjamin David Hamilton, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on APRIL 11, 2013.

It is so ORDERED MARCH 12, 2013



Board of Registered Nursing
Department of Consumer Affairs
State of California

Attachment:

Exhibit A: Accusation No. 2013-270

Exhibit A

Accusation No. 2013-270

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 ELENA L. ALMANZO
Deputy Attorney General
4 State Bar No. 131058
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-5524
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2013-270

12 **BENJAMIN DAVID HAMILTON**
911 Edgewood Drive
13 Southaven, MS 38672

A C C U S A T I O N

14 **Registered Nurse License No. 765187**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing ("Board"),
21 Department of Consumer Affairs.

22 2. On or about January 11, 2010, the Board issued Registered Nurse License Number
23 765187 to Benjamin David Hamilton ("Respondent"). Respondent's registered nurse license
24 expired on January 31, 2012.

25 **STATUTORY PROVISIONS**

26 3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that
27 the Board may discipline any licensee, including a licensee holding a temporary or an inactive

28 ///

1 license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing
2 Practice Act.

3 4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not
4 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
5 to render a decision imposing discipline on the license. Under Code section 2811, subdivision
6 (b), the Board may renew an expired license at any time within eight years after the expiration.

7 5. Code section 2761 states, in pertinent part:

8 The board may take disciplinary action against a certified or licensed
9 nurse or deny an application for a certificate or license for any of the following:

10 (a) Unprofessional conduct, which includes, but is not limited to, the
11 following:

11

12 (4) Denial of licensure, revocation, suspension, restriction, or any other
13 disciplinary action against a health care professional license or certificate by another
14 state or territory of the United States, by any other government agency, or by another
15 California health care professional licensing board. A certified copy of the decision
16 or judgment shall be conclusive evidence of that action . . .

15 COST RECOVERY

16 6. Code section 125.3 (a) and (i) provides as follows:

17 (a) Except as otherwise provided by law, in any order issued in resolution
18 of a disciplinary proceeding before any board within the department or before the
19 Osteopathic Medical Board, upon request of the entity bringing the proceeding may
20 request the administrative law judge to direct a licensee found to have committed a
21 violation or violations of the licensing act to pay a sum not to exceed the reasonable
22 costs of the investigation and enforcement of the case.

23 (i) Nothing in this section shall preclude a board from including the
24 recovery of the costs of investigation and enforcement of a case in any stipulated
25 settlement

22 CAUSE FOR DISCIPLINE

23 (Disciplinary Actions by the Mississippi Board of Nursing)

24 7. Respondent is subject to disciplinary action pursuant to Code section 2761,
25 subdivision (a)(4), on the grounds of unprofessional conduct, in that he was disciplined by the
26 Mississippi Board of Nursing ("Mississippi Board"), as follows:

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2 a. On or about October 17, 2011, pursuant to the Order Suspending License in the
3 disciplinary proceeding titled "In the Matter of Mississippi License No. R-880433, issued to
4 Benjamin Hamilton", the Mississippi Board temporarily suspended Respondent's Mississippi
5 registered nurse license ("license") on the basis that the "public health, safety or welfare
6 imperatively requires emergency action". The Board further ordered that Respondent's license
7 would remain suspended until a hearing was held regarding the facts set forth in the related
8 complaint. A true and correct copy of the Order Suspending License is attached hereto as **exhibit**
9 **A** and incorporated herein.

10 b. On or about July 26, 2012, pursuant to the Revocation of Nursing License in the
11 above disciplinary proceeding, the Mississippi Board revoked Respondent's license. Based upon
12 the sworn testimony and the evidence admitted into the record at the hearing of July 26, 2012, the
13 Board's hearing panel found that Respondent violated Miss. Code Ann. Section 73-15-29 (1) (I)
14 by engaging in unprofessional conduct as identified in Miss. Admin. Code Pt. 2820 R.1.2 (r)
15 (possessing, obtaining, furnishing or administering drugs to any person, including self), as
16 follows: While working at Delta Endoscopy Center, Southaven, Mississippi, Respondent
17 admitted to taking Demerol from the facility for personal use for about a month. Respondent
18 admitted to taking 50 mg and increasing the dosage to 200 mg while on duty. Respondent
19 refused to submit to a reasonable suspicion drug screen on June 29, 2011. A true and correct
20 copy of the Revocation of Nursing License is attached hereto as **exhibit B** and incorporated
21 herein.

22 **PRAYER**

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
24 and that following the hearing, the Board of Registered Nursing issue a decision:

25 1. Revoking or suspending Registered Nurse License Number 765187, issued to
26 Benjamin David Hamilton;
27
28

1 2. Ordering Benjamin David Hamilton to pay the Board of Registered Nursing the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.

5
6 DATED:

October 11, 2012 *Stacie Ben*

for LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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EXHIBIT A

Order Suspending License by the Mississippi Board of Nursing

STATE OF MISSISSIPPI
BOARD OF NURSING

IN THE MATTER OF MISSISSIPPI
LICENSE NO. R-880433, issued to:

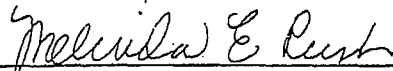
BENJAMIN HAMILTON
911 EDGEWOOD DRIVE
SOUTHAVEN, MS 38672
Respondent

DOB: 12/20/1979

ORDER SUSPENDING LICENSE

COMES NOW the Mississippi Board of Nursing, pursuant to Mississippi Code Annotated Section 73-15-29 (4) (1972) as amended, and issues this Order temporarily suspending the license of **RESPONDENT, BENJAMIN HAMILTON**, on the basis that the public health, safety or welfare imperatively requires emergency action. The nursing license of **BENJAMIN HAMILTON, R-880433**, will remain suspended until such time as a hearing may be held regarding the facts that form the basis of the Complaint, attached hereto as Exhibit "A" and incorporated herein by reference.

SO ORDERED this the 17th day of October, 2011.



MELINDA E RUSH, DSN, FNP
EXECUTIVE DIRECTOR

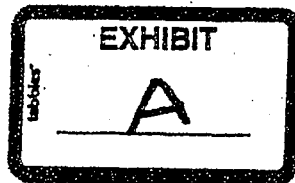
24 OCT 2011 10:00
MISSISSIPPI BOARD OF NURSING

STATE OF MISSISSIPPI
BOARD OF NURSING

IN THE MATTER OF MISSISSIPPI
LICENSE NO. R-880433, issued to:

BENJAMIN HAMILTON
911 EDGEWOOD DRIVE
SOUTHAVEN, MS 38672
Respondent

DOB: 12/20/1979



COMPLAINT

Based on information and belief, I, the undersigned, do hereby charge that **RESPONDENT**, **BENJAMIN HAMILTON**, violated the following:

CHARGE I: That **RESPONDENT** violated Miss. Code Ann. Section 73-15-29 (1) (D) in that **RESPONDENT** has engaged in any unprofessional conduct as identified by the board in its rules, specifically, Miss. Admin. Code Part (R) in that **RESPONDENT** was possessing, obtaining furnishing or administering drugs to any person, including self, except as legally directed;

COUNT A: While working at Delta Endoscopy Center, Southaven, Mississippi, **RESPONDENT** admitted to taking Demerol from the facility for personal use for about a month. **RESPONDENT** admitted to taking 50mg and increased the dosage to 200mg while on duty. **RESPONDENT** refused to submit to a reasonable suspicion drug screen on 06/29/2011.

Such actions constitute grounds for disciplinary action against a nurse's license pursuant to Miss. Code Ann. Section 73-15-29 (1972).

(BOARD SEAL)

2406241110
REC'D - CIVIL RIGHTS DIVISION
JUL 1 2011

s/Brett B. Thompson

Brett B. Thompson
Senior Attorney

BENJAMIN HAMILTON
COMPLAINT page 2

STATE OF MISSISSIPPI
COUNTY OF RANKIN

Personally appeared before me on this the 17TH day of October, 2011 the undersigned authority in and for the county and state aforementioned, Brett B. Thompson, Senior Attorney, Mississippi Board of Nursing, who after having been first duly sworn by me, states on oath that the matter and facts set forth herein are true to the best of her knowledge based on information and belief.

(NOTARY SEAL)

C. O. V. Mays
NOTARY PUBLIC

2011 OCT 17 PM 10:00
BENJAMIN HAMILTON

STATE OF MISSISSIPPI

HINDS COUNTY

I, Melinda E Rush, Executive Director of the Mississippi Board of Nursing, do hereby certify that I am Custodian of Records of the Board of Nursing. I certify that attached to this affidavit are true and correct copies of documents as they appear in the files and records of the Mississippi Board of Nursing pertaining to: Benjamin Hamilton Mississippi License No. R-880433

WITNESS my hand and seal of the Mississippi Board of Nursing this the ____ day of
October, 2011.

MISSISSIPPI BOARD OF NURSING

Melinda E Rush

By _____

Melinda E Rush, DSN, FNP
Executive Director

BOARD SEAL

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EXHIBIT B

Revocation of Nursing License by Mississippi Board of Nursing

BOARD OF NURSING
STATE OF MISSISSIPPI

IN THE MATTER OF MISSISSIPPI
LICENSE NO. R-880433 ISSUED TO:

BENJAMIN HAMILTON
6864 COMMANDER ROAD
MILLINGTON, TN 38053

*
*
*
* REVOCATION OF NURSING
* LICENSE

AND/OR
911 EDGEWOOD DRIVE
SOUTHAVEN, MS 38672

AND/OR
8754 YORKTOWN DRIVE
SOUTHAVEN, MS 38671
Respondent

DATE OF BIRTH: 12/20/1979

FINAL ORDER

THIS CAUSE came before a Hearing Panel comprised of three (3) members of this Honorable Board for a hearing on the 26th day of July, 2012, in the hearing room at the office of the Mississippi Board of Nursing located at 1080 River Oaks Drive, Suite A-100, Flowood, Mississippi 39232-9779 to determine whether it should impose disciplinary action against the nursing license and privilege to practice of the RESPONDENT, BENJAMIN HAMILTON, LICENSE NUMBER R-880433, pursuant to Section 73-15-29 of the Mississippi Code of 1972, as amended.

The hearing was held pursuant to Section 73-15-31 of the Mississippi Code of 1972, as amended, and pursuant to any and all other applicable Mississippi laws and regulations.

The Board has jurisdiction over the party and the subject matter.

The RESPONDENT, BENJAMIN HAMILTON, was not present at the Board Hearing

and was not represented by Counsel at such hearing. Having been properly noticed, having been called and having failed to appear, the Board's Hearing Panel proceeded in the absence of **BENJAMIN HAMILTON**.

The Board's Hearing Panel consisted of Sharon Catledge, RN, FNP, Merlene Myrick, RN, and LeKathryn Gipson, LPN. David Schaefer, LPN, served as an alternate but did not participate in either the deliberations or decision.

The Board's Hearing Panel received and heard sworn testimony at the hearing. Based on the sworn testimony and the evidence admitted into the record at the hearing, the Hearing Panel of the Board of Nursing makes the following **FINDINGS OF FACT** and **CONCLUSIONS OF LAW**:

FINDINGS OF FACT

1. The Board's Hearing Panel finds that **RESPONDENT** was properly noticed of the Complaint and the date and time of the hearing in accordance with statutory law.
2. The Board's Hearing Panel finds that **RESPONDENT** was not present at the Board hearing and was not represented by an attorney at such hearing.
3. The Board's Hearing Panel finds that **RESPONDENT** is guilty of Charge I, Count A in the Complaint based upon the sworn testimony and the evidence admitted into the record at the hearing.
4. The Board's Hearing Panel finds that **RESPONDENT** violated Miss. Code Ann. Section 73-15-29 (1) (l) in that **RESPONDENT** has engaged in any unprofessional conduct as identified by the board in its rules, specifically, Miss. Admin. Code, Pt. 2820 R.1.2 (r) in that **RESPONDENT** was possessing, obtaining, furnishing or administering drugs to any person, including self, except as legally directed. **COUNT A:** While working at Delta Endoscopy Center, Southaven, Mississippi, **RESPONDENT** admitted to taking Demerol from the facility for personal use for about a month. **RESPONDENT** admitted to taking 50mg and increased the dosage to 200mg while on duty. **RESPONDENT** refused to submit to a reasonable suspicion drug screen on 06/29/2011.

CONCLUSIONS OF LAW

1. That the Mississippi Board of Nursing has jurisdiction over the party and the subject matter.
2. The RESPONDENT'S conduct constitutes sufficient grounds for the revocation of the RESPONDENT'S LICENSE NUMBER R-880433, and privilege to practice as a nurse in the State of Mississippi pursuant to Section 73-15-29 of the Mississippi Code of 1972, as amended.
3. By clear and convincing evidence, the RESPONDENT, BENJAMIN HAMILTON, LICENSE NUMBER R-880433, violated Section 73-15-29 (1)(l) of the Mississippi Code of 1972, as amended, as set forth above, as well as violating Miss. Admin. Code, Pt. 2820 R.1.2 (r) of the Mississippi Board of Nursing Rules.

Based upon the above FINDINGS OF FACT and CONCLUSIONS OF LAW, the Hearing Panel of the Board hereby ORDERS that the RESPONDENT, BENJAMIN HAMILTON, LICENSE NUMBER R-880433, shall be and is hereby found guilty of CHARGE I in the Complaint.

IT IS ORDERED BY THE HEARING PANEL OF THIS BOARD that the nursing license and privilege to practice of the RESPONDENT, BENJAMIN HAMILTON, LICENSE NUMBER R-880433, shall be and is hereby REVOKED as a result of the herein guilty finding.

Please be advised that you have a right to appeal the decision of the Board's Hearing Panel to the full membership of the Mississippi Board of Nursing in accordance with Section 73-15-31 of the Mississippi Code of 1972, as amended.

A copy of this Order shall be served upon the RESPONDENT, BENJAMIN HAMILTON, LICENSE NUMBER R-880433, by Certified Mail-Restricted Delivery, Return Receipt Requested.

SO ENTERED, THIS THE 15 DAY OF AUGUST 2012

MISSISSIPPI BOARD OF NURSING

BY:

Melinda E Rush

MELINDA E RUSH, DSN, FNP
EXECUTIVE DIRECTOR

(BOARD SEAL)